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Open public consultation on the Trade and Sustainable Development (TSD) Review

Summary Report

December 2021



Disclaimer

The [Open Public Consultation \(OPC\)](#) was launched by the European Commission to gather input from citizens and stakeholders as part of the on-going review of the Trade and Sustainable Development (TSD) policy. The OPC was prepared and run by the European Commission. The Commission also launched an independent study to map and compare the different approaches to implementation and enforcement of TSD provisions by a number of EU partners in their trade agreements. The study is delivered by a team led by LSE Consulting's Trade Policy Hub with the participation of Milieu Consulting SRL. The team was tasked to prepare a summary of the contributions to the OPC, which are presented in the current report.

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Introduction

This section presents the results of the open public consultation ‘*Trade and sustainable development in EU trade agreements: Review of current approach*’ carried out by the European Commission between July and November 2021. The consultation was available to the public through the EU Survey website. The questionnaire was available in all EU official languages.

The public consultation used a questionnaire to gather information and views from stakeholders. The questionnaire consisted of 15 open questions. The questions focused on implementation and enforcement of TSD provisions.

71 responses to the consultation were received. 26 respondents identified as a business association or company, 20 as an NGO or environmental organisation, 11 as a trade union, 4 as a public authority, 1 as an academic or research institution, 1 as an EU citizen, and 8 as ‘other’. A full list of participating organisations can be found in the Annex, including a respondent’s description of the type of organisation.

This report provides an overview of the responses to all questions of the public consultation questionnaire. The results of the survey are presented question-by-question in this report. A summary of responses is presented for each question. Where they are similar, positions are grouped according to stakeholder groups.

It was observed that some organisations with similar positions submitted responses based on a common model. This was the case for a group of trade unions, for a group of NGOs who also submitted a jointly signed letter, and several business organisations.

1. Question 1

The EU addresses sustainability challenges with cross-border implications in dedicated multilateral fora (e.g. on climate change and biological diversity) and via its autonomous measures (including legislative ones). Against this background, what should be the contribution of the EU trade policy to promote the transition to a greener, fairer and more sustainable economy? How should the implementation and enforcement of TSD chapters in FTAs complement and support the EU's multilateral and autonomous initiatives?

There is general agreement amongst respondents to this question that EU trade policy should contribute to protecting the environment, promoting labour rights and human rights and generally protecting vulnerable people. There are diverging views on how this can be achieved.

In general, **business associations** were in favour of using trade policy as a means of opening and continuing cooperation on sustainability issues with partner countries and spreading European sustainability objectives. Respondents from this group warned against the use of trade policy as a means of enforcing sustainability objectives in partner countries, arguing that this was the responsibility of other organisations such as MEA secretariats or the ILO and was outside the remit of trade policy.

Many **business associations** highlighted the importance to them that TSD chapters ensured a level playing field for EU businesses with businesses in partner countries. Some were willing to see use of strong enforcement remedies for this purpose. One respondent from this group stated that TSD chapters should not become a precondition for trade. Some respondents from this group called for the use of technical assistance and cooperation to promote capacity of developing partner countries.

Respondents from **trade unions** and **NGOs** argued that the EU should use the leverage of its market size to ensure that MEAs, labour rights and human rights conventions are ratified by partner countries prior to signing of agreements. In this sense, EU trade policy would be a tool for furthering the ratification of international agreements. Respondents from these stakeholder groups also supported the use of trade agreements to uphold implementation of these international agreements, by linking removal of tariffs to implementation.

Numerous respondents from **NGOs** argued that trade policy should not be limited to opening market access, in line with the European Green Deal's prioritisation of environmental and social objectives. Many responses stated that in order to maintain coherence with the European Green Deal, a re-prioritisation of the environment, decent work, economic sustainability over economic interests was necessary. One way that was suggested to ensure this would be to include environmental and social provisions throughout trade agreements rather than limiting them to a specific TSD chapter.

One think tank suggested that attention should be shifted from inclusion of sustainability criteria in FTAs towards strengthening EU norms and standards to ensure that products entering the EU market adhere to European Green Deal objectives¹. Emphasis on promoting EU standards for imports was also recommended by respondents from NGOs and business associations.

2. Question 2

What have been the main benefits of closer collaboration of the European Commission with the European Parliament, with the Member States, other relevant EU institutions and bodies and international organizations on the implementation and enforcement of TSD chapters? How should these partnerships be shaped going forward?

Approximately a third of respondents to the survey considered that cooperation should continue as it is now in a similar way in the future. Trade unions and business associations were well represented in this group. Improved cooperation with the European Parliament was welcomed by respondents because it has made

¹ Jacques Delors Institute

discussion around trade and sustainable development accountable and open to critique² and according to one respondent enhanced the ambition and importance given to TSD provisions³.

Cooperation with international organisations was mentioned by many respondents. The 'Responsible business conduct in Latin America and the Caribbean' programme with the ILO, OECD and UNHCR was mentioned as a positive example.⁴ Several respondents from trade unions and public authorities noted that they were pleased with how the European Commission's Expert Group on TSD has strengthened links with Member States, but called for further consultation with DAGs.

Suggestions for developments to partnerships going forward include:

- Use of delegations in partner countries to further TSD objectives, including European Parliament delegations, Member State embassies and contacts with national assemblies in the partner country;
- Further dialogue with the European Parliament and a greater role for Parliament in monitoring implementation of TSD provisions; involvement of DAGs in cooperation between the Commission and the Parliament;
- Greater involvement of international organisations such as the ILO and secretariats of MEAs, both in the development phase of the agreements and the implementation monitoring and enforcement of agreements;
- More use of the technical expertise of other Commission services such as DG CLIMA, DG EMPL, DG INTPA for greater coherence between trade policy and other policies of the EU, in particular the European Green Deal. Similarly, coordination with the EEAS and other institutional bodies such as the EESC is considered an important factor in the effective implementation and enforcement of TSD provisions.

Trade unions in particular called for further cooperation with the ILO, OECD and UN regarding multinational enterprises and business and human rights. It was highlighted by some participants that while the ILO may have strong monitoring systems in place, some of the MEA secretariats do not, and therefore greater attention from the Commission was needed here⁵.

3. Question 3

How do you see the role and contribution of Domestic Advisory Groups (DAGs) and/or other representatives of employers, trade unions, environmental and other non-governmental organisations in the monitoring of the implementation of TSD chapters? How can they better contribute to the monitoring of the implementation of TSD chapters?

A significant number of respondents have a **positive** opinion on the role and contribution of DAGs. NGOs and business associations praised the expertise of DAGs for being an information gateway for the EU and for playing a critical role in ensuring effective (local) monitoring and implementation of TSD provisions. Some of these respondents also praised the EU for regularly consulting DAGs for their work and recommendations and encouraging the participation of civil society actors in trade policy, though many considered that progress should be made in this area.

At the same time, most organisation types, particularly NGOs and business associations, called for ways to **improve DAGs** and their effectiveness. The recommendations that were most frequently proposed across the board were increasing financial support and available resources, and giving more responsibilities to DAGs. NGOs often mentioned the importance to expand the representativeness and composition, especially in terms

² *Irish Exporters Association*

³ *Jacques Delors Institute*

⁴ *Business Europe*

⁵ *Fern*

of environmental and labour rights. Both stakeholder groups also stressed the need for frequent and detailed information provided by EU and third countries, which also entails more transparent procedures and better access to evidence. Other suggestions included making further progress in third countries, more interaction and cooperation between DAGs, and enhancing their accessibility and visibility.

A need for **more transparency and communication** through regular meetings between the relevant stakeholders came up often in responses. In particular, several organisations, especially trade unions, called for the establishment of official platforms for DAGs to enable constant communication with EU institutions and international bodies, such as a feedback procedure in which the Commission would have to officially respond to concerns raised by DAGs. Furthermore, it was repeatedly suggested to extend the scope of DAGs and make their role explicit in the agreements, especially concerning sustainability aspects. One respondent pointed to additional civil society forums in certain FTAs. Such broader and dedicated forums are seen as necessary for providing input on key EU proposals and adequately monitoring the implementation of the TSD chapters.

Stakeholders from different backgrounds called for an increase in the involvement of civil society, businesses, and NGOs for **effective enforcement**, notably in partner countries. It was suggested that this would require improved access to information from the European Commission. One business association stated that it is crucial to ensure that the economic dimension of sustainable development and economic viability are taken into account in debates.⁶ It was also highlighted that the composition of DAGs needs to be properly balanced so that business, labour and other civil society stakeholders are given equal opportunities to steer the work of DAGs.

Other remarks by different types of respondents referred to **making DG TRADE's complaints system clearer and more accessible**. For instance, the TSD Complaint Form should be made more user-friendly for stakeholder groups to submit information, including complaints from civil societies of partner countries. Moreover, the Single Entry Point (SEP) should be enhanced for non-EU parties. One NGO⁷ stated that the SEP can address violations of TSD provisions but that the mechanism has barely been used, which is likely the result of the vagueness of the language displayed by many TSD chapters.

4. Question 4

In the last years the EU has focused its implementation efforts on specific priorities/partner countries. What would you highlight as the main achievements and/or shortcomings and what improvements could be considered in this regard?

Respondents generally found that the EU's approach is becoming increasingly focused. Nevertheless, an overarching theme was the perceived inadequacy of concrete action plans for implementation of TSD provisions. Some respondents called for a transition in wording towards precise implementation commitments, for example through the use of key performance indicators. Multiple stakeholders called for more binding action plans regarding implementation of TSD provisions. This is a reoccurring theme amongst business organisations, NGOs as well as public authorities. One business association refers to violations in multiple areas covered by the TSD chapters and suggests increasing ex-post controls and checks. Multiple respondents also urge for the ratification of ILO conventions.

Numerous respondents expressed concerns about fundamental labour rights in partner countries. **Business associations** and **trade unions** were particularly vocal about this topic. While respondents generally appreciated the EU's efforts in addressing such issues, there was consensus that labour and human rights issues are far from solved. Implementation of climate and environmental considerations was mentioned as being crucial to achieving the EU's own green ambitions.

Several respondents called for increased support for partner countries including further financial support to help countries develop their trading capacity. With all trade partners having unique pre-existing conditions, a common theme is also the need for increased consideration for specific country needs. This is predominantly

⁶ *BusinessEurope*

⁷ *Dutch Society for the Protection of Animals (Dierenbescherming)*

brought up by trade unions, who are also the primary stakeholders to suggest increased civil society involvement as a solution to developing country specificity. Suggestions for increased communication and transparency are often also brought up in parallel.

5. Question 5

How can synergies between TSD implementation and development cooperation be further explored? What type of supporting measures for developing partner countries would be needed?

Several **NGOs**, as well as **business associations**, called for **technical and financial assistance** to partner countries. One business association notes that trading countries often do not have the experience, expertise, or financial means to implement the changes necessary to comply with the TSD requirements in FTAs. The general stance is that aiding developing partner countries will help develop their capacity-building and assess the legality and conditions of the supply chain.

Multiple trade unions responding to the survey argued that the EU's **Aid for Trade** strategy plays a key role in building capacity to ensure developing countries can participate in the global trade system. They called for the strategy to be used to assist trading countries in facilitating social dialogue, occupational health and safety standards, institutional development, and financing labour inspectorates.

Respondents from business organisations, NGOs and public authorities argue that **Sustainability Impact Assessments (SIAs)** are crucial to implement real change and ensure that best practices are used, with one NGO arguing that “ex-ante and ex-post SIAs could serve identifying country-specific challenges and needs, including the revision of domestic laws, procedures and practices that are not compliant with international human rights law.”⁸

Academic and research institutions touch upon a range of aspects in terms of developing synergies between TSD implementation and development cooperation. One institution argues that EU external cooperation is not only relevant in the context of trade agreements, but especially in the EU's autonomous trade measures, which may create barriers to trade for many developing countries.⁹ It is suggested that projects are developed to provide technical assistance to trade partners in the context of negotiation and implementation of trade agreements. Also highlighted is the importance of recognising the differing needs of individual partner countries to improve domestic practices and policies by providing tailored support.

6. Question 6

In view of the objectives and the broad scope of the provisions of TSD chapters of EU FTAs, how do you evaluate the suitability and effectiveness of the current dedicated dispute settlement mechanism for TSD?

Numerous business associations and companies responding to the survey believed that the current dedicated dispute settlement mechanism for TSD is adequate and efficient. Several business associations stressed that a cooperation-based approach is preferred to the introduction of sanctions in cases of non-compliance. Two business associations¹⁰ used the EU-Korea case in their answers as evidence that close engagement, diplomatic dialogue, and cooperation is a suitable approach to ensure the effective implementation of TSD-related provisions and solve violations of TSD commitments.

⁸ *International Federation for Human Rights*

⁹ *Institute for European Environmental Policy*

¹⁰ *European Services Forum (ESF) and the Confederation of Danish Industry.*

On the contrary, for many **NGOs** responding to the survey, the suitability and effectiveness of the current dedicated dispute settlement mechanism for TSD are insufficient. **Trade unions, public authorities, and environmental organisations** responding to the survey were also vocal about a perceived lack of enforcement. One NGO¹¹ stressed that the current dedicated dispute settlement mechanism for TSD remains strongly dependent on the willingness of the parties involved to move ahead on a raised issue. Moreover, several NGOs highlighted the shortcomings of the panels of experts and the limited impact of their decisions on partner countries since the decisions can be non-binding and the current mechanism does not provide for the situation where both parties do not agree with the decision of the panel of experts. One NGO¹² also pointed out that, despite several violations of commitments on labour and environmental standards occurring in partner countries, the current DSM had only been triggered once in the context of the EU-Korea agreement, which it put forward as evidence that the current dispute settlement mechanism does not meet its purpose.

Multiple **NGOs** put the emphasis on the need for effective enforcement mechanisms. Suggestions were made as to how to improve the current mechanism and guarantee proper enforcement of TSD provisions. Several NGOs suggested that TSD commitments should be subject to the same dispute settlement mechanism as for trade provisions. This idea was also supported by several **public authorities, environmental organisations, and trade unions**.

A common occurring theme was the lack of provisions on trade sanctions and/or remedies such as compensation for non-compliance with or failure to implement TSD provisions. Several **NGOs** suggested having a sanction-based mechanism including, for instance, a mechanism of suspension of trade concessions in cases of non-compliance; the possibility to denounce or suspend the FTA; the introduction of financial penalties. On the contrary, several **business associations** stressed that the application of sanctions, for instance, by withdrawing market access concessions, risked hurting the most vulnerable and creating social and environmental disruptions. According to these respondents, a sanction-based approach would jeopardize the EU's trading position by discouraging partner countries from engaging with the EU.

Finally, involving civil society in the enforcement of the commitment in TSD provisions was a theme that appeared several times in answers from **NGOs**.

7. Question 7

The European Commission has created the Chief Trade Enforcement Officer and the Single Entry Point in 2020. What in your opinion is their distinct contribution to the implementation and enforcement of the EU's TSD chapters?

Many survey respondents, from both **industry** and **civil society**, welcomed the creation by the European Commission of the Chief Trade Enforcement Officer (CTEO) and the Single Entry Point (SEP). However, several respondents to the survey, in particular NGOs, stressed that, although this constitutes a step towards better implementation and enforceability of EU's TSD Chapters, the current process could be improved. Some suggestions were made about how to improve it.

A commonly occurring theme regarding the SEP was that the **process is not sufficiently defined**. Numerous respondents to the survey stressed that the operating guidelines do not set a clear procedure to deal with complaints. Several public authorities advocated for clearer steps and timelines.

Several respondents to the survey regretted that the scope of the SEP is limited to Member States, individual companies, business/trade associations, civil society organisations, and citizens from the EU and not from third countries.

Furthermore, an important number of respondents to the survey stressed that the **level of transparency of the process is insufficient** for relevant stakeholders, including civil society actors, to be able to follow and contribute to the processes in a meaningful way. In particular, respondents to the survey pointed out the lack of transparency regarding how the decisions are taken by the CTEO. Some stakeholders suggested disclosing

¹¹ Oxfam België/Belgique.

¹² Eurogroup for Animals.

the number and the list of complaints submitted to the CTEO and providing information regarding case-handling criteria (e.g., why some complaints have not been considered). Moreover, several trade unions that responded to the survey pointed out a lack of independent control over the SEP and the decisions of the European Commission.

Further involvement of civil society and DAGs with the CTEO and SEP was also a recurring theme. According to some respondents to the survey, the CTEO could benefit from engagement with civil society actors and DAGs, for instance, to compare their assessment of the implementation of sustainability commitments and information on the ground. Some suggested having regular exchanges between the CTEO and relevant stakeholders through the civil society dialogue as well as reporting to the relevant DAGs. Strong emphasis was put by several stakeholders on the involvement of DAGs in all stages of the SEP's procedure of complaints in cases of violations of sustainable trade commitments.

According to numerous respondents to the survey, including business associations, NGOs, companies and business organisations and public authorities, it is too early to assess the contributions of the SEP and CTEO to the implementation and enforcement of the EU's TSD Chapters.

Several business associations pointed out the **lack of awareness** of these initiatives among industry.

8. Question 8

Is the level of transparency and available information on the implementation and enforcement of TSD chapters sufficient for civil society to follow and to contribute to these processes? Where do you see gaps? Do you have suggestions to address them?

Stakeholders from multiple backgrounds, and particularly among **NGOs**, stated that there should be **more accessible, detailed and comprehensible information** reported from both the EU and partner countries so that civil society can better contribute. Several NGOs think it is old-fashioned to have the information only available in places like DG TRADE's website, which they describe as not being user-friendly, and will therefore lack visibility. A business organisation proposed to address this by calling on the Commission Representation offices in Member States to open dialogue with relevant groups, directly via roundtables and through newsletters, webinars, and events, to **spread more awareness** by communicating the existence of the TSD chapters and the positive social and environmental impacts of free trade.

One respondent mentioned actively communicating the state of affairs on EU Trade Policy and the TSD chapters, and its (positive) contributions, as another solution. Other suggestions included clearly-phrased TSD obligations, reporting based on action plans with key performance indicators, increasing the number of Civil Society Dialogues, and an ex-post monitoring system with a 'review and revision' clause.

In addition, respondents called for **more transparency from the European Commission**. A business organisation indicated that the Commission should be more proactive in its outreach to civil society representatives. One NGO stated that transparency from national governments within the EU also needs to be improved.

Others proposed that the different DGs should coordinate and create an overview of EU-funded projects in relevant partner countries that contribute directly or indirectly to the implementation of TSD chapters, regularly update the DAGs on relevant developments and the implementation of projects, record all submitted complaints, and publish the dispute settlement resolutions to allow civil society and elected officials to react.

Moreover, most stakeholder types highlighted that **civil society should be involved more practically** as their recommendations add useful value for both implementation and reporting non-compliance. Working closer together with the EU could offer key insights in how EU trade policy and EU FTAs can be fairer and more sustainable. A few trade unions raised the importance of (re-)establishing expert groups that provide regular engagement on specific trade issues, as well as calling for further participation of all stakeholders at each stage of the negotiation process, not only during the implementation phase.

It was often mentioned that **regular reports and minutes of meetings** would help support civil society in the process. One NGO thinks such reports could act as a catalyst for countries for more structured follow-ups on the needed improvements.

There were also a small number of **positive** responses that consider the level of transparency and available information as sufficient. Business organisations mainly praise the recent improvements made by the Commission in terms of transparency and information provided on the DG TRADE website, published annual reports, Civil Society Dialogues, and information sharing platforms. Some NGOs still regard the level of transparency relatively high and welcome the fact that minutes of FTA committees are available.

9. Question 9

Do you think EU TSD chapters need additional remedies to ensure enforcement? If so, what type of remedies would be effective in contributing to sustainable development? Would there be a need for a targeted approach (i.e. adapted to the nature of commitments or for specific sustainability priorities)?

Most responses to this question centred around whether sanctions should be used to assist enforcement of TSD provisions.

Most **NGOs** and **trade unions** responding to the survey were in favour of additional remedies to enforce TSD provisions including **sanctions**. **Business associations and companies** responding to the survey were more likely to be against use of sanctions for enforcement of TSD provisions, although some said that they would be in favour of sanctions. There was an even split amongst **public authorities** responding to the survey between those in favour and those against. **Business associations** arguing for sanctions emphasised the importance of maintaining a level-playing field for businesses.

Suggestions for sanctions included temporary tariff withdrawal, fines and expansion of the essential element clause to include areas such as the Paris Agreement.

It was widely observed that in order for sanctions to be possible, it was first needed to set out a **roadmap or action plan for implementation** of any reforms needed for compliance with TSD provisions, with clear, binding commitments that could be monitored. Such a roadmap could be established prior to concluding the trade agreement. It was highlighted by many of those in favour of sanctions that a targeted country-by-country approach was needed, and that the establishment of a country-specific action plan would ensure that any action was relevant to the social and environmental challenges faced by the partner country.

Trade unions responding to the survey stated that ratification of the ILO Core Labour Conventions should be a pre-requisite to concluding any trade agreement.

Those **against use of sanctions** took various positions. Some argued that additional enforcement remedies could **adversely impact trade relations** with the partner country in question and thereby negatively affect sustainable development and the most vulnerable people in partner countries. It was argued that long-term cooperation for development should be prioritised.

Others said that trade and investment agreements **should not be used to enforce multilateral environmental agreements or labour conventions**, saying that these have their own systems for monitoring and enforcement, and trade agreements should not attempt to alter them or sanction their non-implementation. According to some of those against sanctions, the current EU approach is sufficient and should not be changed, with one respondent pointing to the dispute settlement regarding ILO conventions in the context of the EU-Korea agreement.

Some of these arguments were pre-empted by those in favour of sanctions, who said that any sanctions must be analysed through an impact assessment to ensure that they do not cause further harm to vulnerable people already harmed by the original infraction of the TSD provisions.

Several respondents said that sanctions should be applied only as a last resort, with one respondent setting out a five stage-progressive strategy starting with a minimalist approach.¹³

Other suggestions for enforcement included introducing an incentive-based approach through staged tariff-reduction (see question 11).

Some of these respondents were joined by a number of respondents from business associations in urging the European Commission to use existing tools, including the current dispute settlement mechanism, more assertively to improve enforcement of TSD provisions. It was suggested by these respondents that better use of existing mechanisms was preferable to introducing new enforcement mechanisms. Recent changes made in the area of enforcement of TSD provisions, such as the creation of the **CTEO** role and the **SEP** for complaints were praised and welcomed by several participants, from various organisation backgrounds.

10. Question 10

Do you see any disadvantages with the introduction of additional remedies for the enforcement of TSD chapters, including their impact on the cooperation and engagement on the ground?

Answers to this question showed a marked division between business associations on the one hand and NGOs and trade unions on the other.

Business associations arguing against the use of stronger enforcement remedies emphasised potential risks of using sanctions. One group of respondents suggested that additional enforcement measures pose a risk to EU trade and EU companies by **introducing uncertainty** in supply chains and the possibility of **retaliatory sanctions**. Some respondents feared that additional remedies would require the EU to make **concessions** in other areas of the agreement such as less market access or on rules of origin.¹⁴

It was also claimed that a stronger approach to enforcement could isolate the EU by creating **tensions** with partners and making other countries reluctant to engage with it, pushing partner countries to trade with EU 'rivals' with weaker social and environmental standards. A number of business associations argued that use of sanctions could **endanger development** of less wealthy partner countries, by leading to reduced export volumes, revenues and employment and thereby hurting the workers that the TSD chapter aims to protect.

Numerous respondents to the survey from **NGOs** and **trade unions** favourable to the use of stronger enforcement remedies emphasised that they should be used as a **complementary tool** to existing cooperation efforts and be developed on a **country-by-country basis**. It was argued that carefully designed and adapted measures balanced with more proactive cooperation could reduce or remove the potential for tension with partner countries. The effectiveness of the remedy would be in the threat of its activation rather than activation itself, by making enforcement of provisions more **credible**.

Many also underlined that they should be used after completion of **ex-ante impact assessments**. This would help to avoid sanctions harming vulnerable people. One means of doing this would be to consult DAGs and improve cooperation in the partner country through EU delegations 'on the ground'.

Some business associations stated that if stronger enforcement remedies were to be used, they should be targeted towards specific industries or companies. Another suggested that if sanctions were used, TSD chapters should be more limited in scope. Several respondents also argued for the use of sanctions to ensure a level playing field.

¹³ Friedrich-Ebert-Stiftung

¹⁴ European Services Forum

Several respondents from trade unions and NGOs as well as one business association said that they saw **no disadvantages** to the introduction of additional remedies for enforcement of TSD chapters. Respondents argued that the use of sanctions would not prevent cooperation and engagement.

Several business associations claimed that the evidence **for** sanctions working was weak. Several NGOs claimed that there was no credible evidence **against** sanctions working.

11. Question 11

Are there remedies used by other countries that you think should be considered?

Responses to this question centred around two main areas: lessons to be learned from the United States-Mexico-Canada Agreement (USMCA) and a French-Dutch proposal on a progressive implementation mechanism.

Use of elements of the **USMCA** in EU agreements was suggested in particular by **trade unions, NGOs and business associations**, but principally by the first two. The most commonly mentioned aspect of the agreement was the **facility-specific rapid response labour mechanism**. This mechanism allows a labour complaint to be made by a party if the party believes that workers in a priority sector are being denied their right to collective bargaining or freedom of association. The complaint can grow from a petition by any citizen. Once a petition is submitted to government, it has 30 days to review the evidence for a denial of rights. If it is decided that there is sufficient evidence, the other party has 45 days to review, or, if the other party denies that there is a case, the complainant can go to an independent panel. The complainant party may suspend preferential treatment until a remedy is found, deny entry of goods or impose penalties on the covered facility.

Other elements of the **USMCA** recommended for consideration by the EU by consultation respondents include setting up a **commission to monitor progress** in implementation of labour or environmental reforms in the partner country and sending a **labour or environmental attaché** to the EU representation in the country in question to report on progress. The setting of benchmarks to measure Mexican progress in labour reforms, with enforcement action for compliance failure, was also recommended for consideration by the EU with its partner countries. Others regard changes in the conditions for dispute settlement: the reversal of burden of proof for violation of workers' rights or environmental standards from complainant to defendant; relaxation of the definition of trade effects linked to a violation necessary to bring a dispute; dropping of the requirement that a violation of workers' rights has been sustained or recurring, allowing the dispute mechanism to be brought for an individual violation. It was also suggested that the EU should monitor the effectiveness of the environmental council established as part of the agreement to see if a similar mechanism should be included in EU agreements.

Numerous respondents mentioned the proposals made by France and the Netherlands regarding reform of TSD commitments in their Non-paper on trade, social economic effects and sustainable development¹⁵. Particularly mentioned was the staged implementation of tariff reduction to reward and incentivise implementation of TSD commitments, accompanied by clear conditions for reductions and potential for withdrawal of benefits in the case of breaches of commitments.

Several respondents mentioned that any money from fines imposed in the context of sanctions should be used to help remedy the situation in the country paying the fine and thereby contribute to development.

A small number of respondents suggested that the UK-EU trade agreement should be taken as a source of inspiration for resolving breaches of TSD commitments putting the level-playing field in danger.

Several respondents, in particular **industry associations**, stated that they were not aware of any other measures that should be considered.

¹⁵ Non-paper from the Netherlands and France on trade, social economic effects and sustainable development <https://www.tresor.economie.gouv.fr/Articles/73ce0c5c-11ab-402d-95b1-5dbb8759d699/files/6b6ff3bf-e8fb-4de2-94f8-922eddd81d08>

12. Question 12

Are there any key additional environmental or climate commitments that should be covered by TSD chapters? What areas should the EU prioritise in TSD implementation, and what actions do you think should be pursued to make progress on those priorities?

A majority of both business associations and trade unions, as well as numerous NGOs mentioned the **Paris Agreement** in their responses to Question 12, stating that the Paris Agreement should be included as a matter of course in all the EU's trade agreements.

Several business associations and companies mentioned that provisions encouraging trade in **green goods and services** as well as green public procurement should be included in trade agreements.

Non-governmental organisations focused particularly on sustainable food chains and coherence between trade and sustainable development chapters with the rest of the trade agreement.

Several organisations called for the EU to promote **agroecology and organic farming** in trade agreements by establishing criteria for sustainable production. Animal welfare provisions were also called for. It was suggested that industrial farming potentially encouraged by trade agreements was at odds with provisions in TSD chapters on air, water and ground pollution, biodiversity and climate change. Sustainable agriculture was also mentioned by some business associations that linked the importance of global sustainable food chains with providing a level playing field for EU food producers¹⁶.

Several **trade unions** stated that EU trade policy should contribute to work to decarbonise international transport, in what appears to have been a coordinated response to the consultation. Trade unions were joined by several business associations in calling for stronger enforcement of TSD chapters in order to ensure implementation of MEAs and promote a level-playing field.

A tension between environmental provisions in the TSD chapter and provisions in the rest of agreements was also referred to in other contexts. Respondents from **NGOs, trade unions and think tanks** raised the importance of ensuring that trade agreements are **coherent across the whole agreement**, warning against a silo approach. It was underlined that promotion of environmental and climate objectives should not be confined to the TSD chapter. Use of a precautionary principle was proposed. Also on the subject of consistency, some respondents called for use of a hierarchy clause to give priority to MEAs in case of conflict between the agreement and MEAs.

Several **business associations** highlighted the importance of ensuring that there is a **level playing field**, indeed using the term 'level playing field' in their response. Suggestions were made as to how this could be ensured. For example, one respondent suggested that quantitative targets for environmental objectives such as biodiversity and greenhouse gas emissions should be included directly in the agreement, even when not provided for in multilateral environmental agreements referenced by the trade agreement in question¹⁷.

One participant questioned whether increases in scope of environmental provisions would "really lead to improved environmental protection or rather to increasing costs – to longer negotiations and more concessions in other chapters"¹⁸.

¹⁶ CIBE and CEFS (European association of sugar manufacturers)

¹⁷ AFEP (French association of large companies)

¹⁸ Wirtschaftskammer Österreich (WKÖ)

13. Question 13

Are there any key additional labour rights that should be covered by TSD chapters? What areas should the EU prioritise in TSD implementation, and what actions do you think should be pursued to make progress on those priorities?

Several **NGOs** suggested that EU FTAs include a clear commitment to ratify fundamental ILO conventions while some proposed to make their ratification a prerequisite for concluding an agreement. Several **trade unions** also proposed this, stressing that the conclusion of EU FTAs should be conditioned on the protection of human and workers' rights.

Moreover, some **NGOs** suggested that TSD Chapters include legally binding references to ILO conventions and principles and that TSD Chapters be subject to the general dispute settlement mechanism of EU FTAs.

Most **NGOs** that responded to the survey, as well as several **public authorities**, emphasized the importance of ensuring the effective implementation of ILO conventions and the principles derived from them.

To improve compliance with labour rights, several **NGOs** suggested to institutionalise cooperation at the EU level between European institutions as well as with partner countries. The ILO could also play a key role in the ratification and implementation of TSD chapters as well as in ex-post assessment and monitoring. Respondents from **business associations** commonly highlighted the importance of labour inspections for ensuring implementation of labour rights in TSD Chapters was a common topic among respondents. Promoting better labour inspections in partner countries would be key in ensuring compliance and a level playing field for EU companies.

Several respondents from **trade unions**, **NGOs**, **company/business organisations** and **business associations** mentioned the need for due diligence legislation. Two **trade unions**¹⁹ stated that an additional way to ensure compliance with labour provisions in TSD Chapters could be the establishment of mandatory and effective due diligence mechanisms covering companies' activities and their business relationships, including their supply and subcontracting chains. Several **NGOs** also linked TSD implementation to the EU's upcoming sustainable corporate governance rules. In particular, one business association²⁰ stated that the new EU TSD Chapters should include explicit references to corporate social responsibility and responsible business conduct under their labour provisions.

The most commonly occurring themes regarding areas that the EU should prioritise and integrate into its trade policy were **gender equality** and **women's rights**. Several respondents mentioned **gender-based violence** as a priority area. A **public authority**²¹ suggested including social clauses on gender and inclusiveness in EU FTA and paying particular attention to ILO conventions addressing these issues. Other themes mentioned by respondents were **child labour** and **forced labour** as well as **occupational health and safety** (in particular by **trade unions** encouraging further updates of commitments in this area).

14. Question 14

How can the implementation of EU TSD chapters contribute to a greener, socially just and more resilient post-COVID-19 global economic recovery? What areas should the EU prioritise in TSD implementation and what actions do you think should be pursued to make progress on those priorities?

¹⁹ *Mondiaal FNV and IndustriAll Europe.*

²⁰ *CEFS - European Association of Sugar Manufacturers.*

²¹ *Brussels Capital Region.*

The majority of respondents wants to see **more concrete provisions and stronger enforcement** by the EU to enhance resilience, especially in terms of sustainability and combating climate change with a special focus on the most vulnerable groups. For instance, one respondent thinks the EU needs to make more efforts in finalising negotiations with third countries and then closely monitor their binding commitments.²² One research institution²³ points out that the EU should assertively use its trade instruments to strongly disincentivise any reduction of environmental and social standards in return for economic growth based on competitive advantages.

A large number of **NGOs** that responded to the survey called for the EU to prioritise the **inclusion of sustainability** in all its dimensions in the implementation and enforcement of the TSD chapters. A specific instrument that was often mentioned to address issues at the source in partner countries is the **Carbon Border Adjustment Mechanism**. Similarly, the promotion of voluntary sustainability schemes (e.g., Fair Trade schemes) is seen as a positive action towards promoting sustainable goods. One NGO²⁴ thinks progress can be made through the development of TSD chapters by improving the language, and by linking the granting of trade preferences to specific sustainability requirements.

Business associations mainly suggest **improving supply chains**, with a special focus on the implementation of labour and environmental commitments, to promote the production and distribution of more sustainable products and services. Two business organisations²⁵ requested that the EU support businesses, particularly SMEs, in their process of reconsidering their **supply chain strategy** after the pandemic highlighted the importance of diversifying their sources. This transition support would not only ensure resilient and sustainable growth, but also stimulate trade outside the EU. Moreover, **business associations** prefer to **expand the network and scope of FTAs** to ensure that companies can be resilient through diversification instead of new barriers to trade and reduced market access.

NGOs put the emphasis on ensuring a **level playing field** and **better human and labour rights** (e.g., living wages) by tackling the inequalities within supply chains and focusing on social, health and environmental standards. This includes **increasing knowledge and awareness** so that third countries better understand the impact the FTA would have on their society and economic structure, highlighting the effects of changing trade patterns on marginalised groups.

Several respondents also raised the importance of **effectively measuring Covid recovery**, using sustainability impact assessments and “the doughnut model”, for instance, instead of only focusing on GDP.

Respondents from various organisation types aspire for **more engagement from all stakeholders**, including industry, civil society, governments, and other relevant authorities. This also means increasing cooperation with trading partners, among EU and non-EU civil society organisations, and democratic participation and meaningful involvement of environmental experts and decision makers.

15. Question 15

Are there any other important topics not covered by the questions above that the TSD review should address?

Answers to this question covered a large range of issues. The following issues were brought up by participants:

- The importance of GSP and GSP+ programmes in the run up to the 2023 review
- Prevention of ‘carbon leakage’ through a carbon border adjustment mechanism

²² amfori

²³ Institute for European Environmental Policy

²⁴ Dutch Society for the Protection of Animals (Dierenbescherming)

²⁵ European Shippers' Council (ECTU), BusinessEurope

- Dependence on China for key materials for green technologies
- Whether TSD chapters lead to a growth of non-tariff barriers to trade
- A review of the SIA model and its use
- Communication around TSD chapters, especially with businesses
- Inclusion of provisions on sustainable food systems
- Inclusion of provisions on sustainable business models and sustainable corporate governance
- Promotion of environmental and social objectives beyond TSD chapters, in other parts of EU trade policy
- Work towards WTO reform to promote sustainable development objectives
- Greater study of the impact of trade and investment agreements on vulnerable local actors in developing countries

Annex I. OPC Participant List

Organisation name	Stakeholder type
ActionAid International	Non-governmental organisation (NGO)
Afep (French association of large companies)	Company/business organisation
amfori	Business association
ANIVÉC/APIV - Associação Nacional das Indústrias de Vestuário e Confecção e Moda	Other
ASSUC (European Association of Sugar Traders)	Business association
AVE International	Business association
BEUC, the European Consumer Organisation	Non-governmental organisation (NGO)
Both ENDS	Non-governmental organisation (NGO)
Brussels Capital Region	Public authority
Bundesarbeitskammer	Other
BusinessEurope	Business association
Caobisco- The Association of Chocolate, Biscuit and Confectionery Industries of the European Union	Business association
CC-CC	Business association
CEFS - European Association of Sugar Manufacturers	Business association
CIBE (International Confederation of European Sugar Beet Growers)	Other
ClientEarth	Non-governmental organisation (NGO)
CNV	Trade union
COCERAL	Business association
Confédération Française Démocratique du Travail (CFDT)	Trade union
Cooperativas Agro-alimentarias de España	Company/business organisation
Czechia	Public authority
EBA	Company/business organisation
ECTU - European Shippers' Council	Business association

EU-LAT network	Non-governmental organisation (NGO)
EuroCommerce	Company/business organisation
Eurogroup for Animals	Non-governmental organisation (NGO)
Eurometaux	Business association
Europe Jacques Delors	Other
European Branded Clothing Alliance (EBCA)	Business association
European Cocoa Association	Other
European Confederation of the Footwear Industry	Business association
European Services Forum - ESF	Business association
European Trade Union Confederation	Trade union
European Transport Workers' Federation (ETF)	Trade union
Fair Trade Advocacy Office	Non-governmental organisation (NGO)
Fair Wear Foundation	Other
Fairtrade Labelling Organizations International e.V.	Non-governmental organisation (NGO)
Fern	Non-governmental organisation (NGO)
FESI - Federation of the European Sporting Goods Industry	Business association
FH - Fagbevægelsens Hovedorganisation	Trade union
FIDH (International Federation For Human rights)	Non-governmental organisation (NGO)
Finnish Forest Industries Federation	Business association
Fondation Franz Weber	Non-governmental organisation (NGO)
FoodDrinkEurope	Business association
Friedrich-Ebert-Stiftung e.V.	Non-governmental organisation (NGO)
Friends of the Earth Europe	Environmental organisation
German Trade Union Confederation (DGB)	Trade union
Gouvernement de la Wallonie	Public authority
Government of Flanders	Public authority
Greenpeace EU Unit (joint contribution with MISEREOR)	Non-governmental organisation (NGO)

IndustriAll Europe	Trade union
Institute for European Environmental Policy	Academic/research institution
International Trade Union Confederation (ITUC)	Trade union
Irish Exporters Association (IEA)	Business association
Japan Business Council in Europe (JBCE)	Business association
Mondiaal FNV	Trade union
Nederlandse Vereniging tot Bescherming van Dieren [Dierenbescherming] - Dutch Society for the Protection of Animals	Non-governmental organisation (NGO)
NSE GROUPE	Company/business organisation
Origin country: Malta	EU citizen
Österreichischer Gewerkschaftsbund	Trade union
Oxfam België/Belgique (formerly Oxfam-Wereldwinkels & Oxfam-Solidariteit)	Non-governmental organisation (NGO)
Platform Europe Peru	Non-governmental organisation (NGO)
Porcel - Industria Portuguesa de Porcelanas, SA	Company/business organisation
Swedish Confederation of Enterprise	Company/business organisation
The Confederation of Danish Industry	Business association
TSD Platform	Other
Union des Industries Textiles	Trade union
Veblen Institute	Non-governmental organisation (NGO)
Wirtschaftskammer Österreich (WKÖ)	Other
WO=MEN Dutch Gender Platform	Non-governmental organisation (NGO)
World Fair Trade Organization - Europe asbl	Non-governmental organisation (NGO)